

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0414

**Withholding Tax
For Years 1994 - 1997**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Responsible Officer Liability – Duty to Remit Withholding Tax

Authority: Ind. Code § 6-3-4-8;
Ind. Code § 6-8.1-5-1.

The taxpayer protests the assessment of withholding tax liability.

STATEMENT OF FACTS

The taxpayer, an employer, was assessed liability for failure to remit withholding tax to the Department of Revenue during the years 1994 through 1997. An administrative hearing was scheduled for November 18, 1999, but the taxpayer failed to appear. This Letter of Findings is based on the taxpayer's protest letter, a subsequent letter submitted by the taxpayer, and other information contained in the Department of Revenue file.

I. Responsible Officer Liability = Duty to Remit Withholding Tax

DISCUSSION

The taxpayer argues that he is not liable for the payment of withholding tax. The taxpayer maintains that the withholding of tax from an employee's wages is voluntary and, as such, he chooses not to withhold state tax from his employees' wages. In Indiana, "[t]he notice of proposed assessment is *prima facie* evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Ind. Code § 6-8.1-5-1(b). Every employer who makes payment of wages subject to tax in Indiana is liable to the state of Indiana for the payment of withholding tax. Ind. Code § 6-3-4-8(a)(1). The taxpayer in this case has failed to submit evidence showing that the proposed assessment by the Department is wrong. The taxpayer is an employer paying wages that are subject to tax, making him liable for payment of withholding tax.

to the state. The taxpayer is, therefore, liable for the payment of the withholding tax assessed against him.

FINDING

The taxpayer's protest is denied.